

UNITED STATES COURT OF APPEALS **January 25, 2010**

FOR THE TENTH CIRCUIT **Elisabeth A. Shumaker**
Clerk of Court

In re:

JOHN STEVKO; RICHARD &
ROSEMARIE LETOURNEAU;
ROBERT IDE; LUCAS & BARBARA
AMATO, and PARVIZ TAYEBATI,

Petitioners.

No. 09-1557
(D.C. No. 1:09-MD-02063-JLK-KMT)
(D. Colo.)

ORDER

Before **LUCERO**, **EBEL**, and **HOLMES**, Circuit Judges.

Petitioners John Stevko, Richard & Rosemarie Letourneau, Robert Ide, Lucas & Barbara Amato, and Parviz Tayebati have filed a petition for a writ of mandamus seeking to vacate an order of the district court appointing lead plaintiffs in two securities class actions captioned *In re Rochester National Municipal Fund* and *In re AMT-Free Municipal Fund*.

“[A] writ of mandamus is a drastic remedy, and is to be invoked only in extraordinary circumstances.” *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009) (quotation omitted). “It is not appropriate to issue a writ when the most that could be claimed is that the district courts have erred in ruling on matters within their jurisdiction.” *Id.* at 1187. Accordingly, we will issue the writ “only when the district court has acted wholly without jurisdiction or so

clearly abused its discretion as to constitute usurpation of power.” *Id.* at 1186 (quotations omitted). Petitioners must show that they have “no other adequate means to attain [] relief” and “that [their] right to the writ is clear and indisputable.” *Id.* at 1187 (quotation omitted). In exercising our discretion, we must also “be satisfied that the writ is appropriate under the circumstances.” *Id.* (quotation omitted).

We conclude that petitioners have failed to demonstrate that the district court “acted wholly without jurisdiction or so clearly abused its discretion as to constitute usurpation of power.” *Id.* at 1186. Accordingly, we DENY the petition for a writ of mandamus.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk